



LC Paper No. CB(4)529/12-13(01)

Your Ref 來函編號: CB4/PL/ITB

Our Ref 本函編號: OFCA/B/BR 23/9

By Fax
(Fax No.: 2840 0269)
26 March 2013

Ms Yue Tin-po
Clerk to Panel on
Information Technology and Broadcasting
Legislative Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Yue,

Repeated Contraventions by Asia Television Limited ("ATV")

We refer to your letter dated 14 March 2013 requesting a written response from the Communications Authority ("CA") regarding ATV's repeated contraventions raised by Hon Claudia Mo.

When handling complaints against broadcast materials, if the CA considers that the licensee has contravened the relevant provisions, the CA will carefully consider the nature and severity of the breach, its impact on the community, the licensee's record of non-compliance and the relevant precedent cases, etc, before deciding on the sanction to be imposed. The sanction that may be imposed by the CA for non-compliance cases include an advice, a strong advice, a warning, a serious warning and a financial penalty. In case of repeated or serious contraventions, the CA may even suspend the licence or make a recommendation to the Chief Executive in Council to revoke the licence. The sanctions that may be imposed by the CA under the existing regime can properly reflect the severity of the breaches and are effective in inducing improvement by licensees.

Regarding the recent complaints against ATV's programmes including "ATV Focus" and "Caring Hong Kong's Future", the major areas of contravention were that the programmes had failed to provide suitable opportunities for those being criticised and the audience to

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respond, to include a broad range of views on the discussion of controversial issues, and to respect facts. Taking into account the nature, severity and duration of the lapse, the CA considered that the financial penalties imposed on ATV are appropriate. The CA's press releases issued for the relevant complaint cases are attached for reference.

In reaching its decision on the cases, the CA has adhered strictly to the relevant provisions in the codes of practice and the licence of ATV, and has had regard to the need to treat all parties fairly and to preserve freedom of expression. The CA is aware of the public concern on the licensee's presenting one-sided views in the form of personal view programmes and is reviewing the relevant parts of the codes of practice to address the concern.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Katy Fong", is written over a faint, larger outline of the signature.

(Miss Katy Fong)
Secretary,
Communications Authority

Encl.

cc. Hon Wong Yuk-man
Chairman, Panel on Information Technology and Broadcasting



Press Releases

Communications Authority Reaches Final Decision on Contravention by ATV of the TV Programme Code in respect of its Television Programme "ATV Focus" (ATV 焦點)

The Communications Authority ("CA") received over 42,000 public complaints about the various episodes of the television programme entitled "ATV Focus" (ATV 焦點) broadcast from 3 to 7 September 2012 (the "Episodes"). Considerable processing time has been spent on examining each complaint carefully, categorizing the areas of concern raised by the complainants, and matching them against relevant provisions in the Generic Code of Practice on Television Programme Standards ("TV Programme Code") to identify possible contraventions.

The main allegations regarding the Episodes, which were raised in the 42,000 public complaints, were that they:

- a. presented the views of a person who was not present and identifiable in the Episodes, with the programme title incorporating the name of the station, which were presented like an editorial of ATV setting out the station's own views on a controversial issue of public importance in Hong Kong, viz. the protest against the introduction of national education. This violated the principle that a licensee should be neutral in any discussion of such controversial issues;
- b. were presented as news or current affairs programmes and should not be treated as a personal view programme ("PVP");
- c. contained inaccurate and misleading content and unsubstantiated accusations against people who supported the protest against the introduction of national education; and
- d. presented one-sided partial views on the national education issue but did not provide a suitable opportunity for others, in particular those criticised in the Episodes to respond.

In considering the complaints, the CA noted that the five Episodes were characterised by ATV as a PVP, but no information about the programme host/commentator, the script writer (albeit a pseudonym was given starting 5 September 2012) or the production team was provided. Unlike a conventional PVP, there was no "person" present in the programme putting forward his or her own views on the issues being considered. The way and manner in which the programme was broadcast gave viewers a strong impression that it was an editorial representing the stance of ATV.

Notwithstanding the strong public concerns which were expressed about ATV's broadcast of editorial-like programmes in such a format, the CA noted that the existing TV Programme Code did not expressly prohibit a licensee from expressing its views in a PVP and was silent on the format and the presentation of a PVP. Accordingly, the CA accepted that the Episodes could be regarded as a PVP, albeit a marginal case, and thus would not be subject to the rule of due impartiality applicable to news and current affairs programmes.

The above notwithstanding, the CA found that ATV had contravened Chapter 9 of the TV Programme Code governing PVPs by :

- a. failing to provide a suitable opportunity for response to the five Episodes – in breach of paragraph 17(c);
- b. failing to allow a broad range of views to be expressed on the national education issue – in breach of paragraph 17(d) which provides that licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of PVPs;
- c. providing inaccurate or misleading factual content – in breach of paragraph 1 A, which requires licensees to make reasonable efforts to ensure that the factual contents of news, current affairs programmes and PVPs, are accurate; and
- d. making two factual errors in the two episodes broadcast on 5 and 6 September 2012 – in breach of paragraph 17(b) which provides that facts must be respected and that the opinion which is expressed in a PVP, however partial, should not be based upon false evidence.

Having considered the full circumstances of the case and the provisions of the TV Programme Code, the CA decided that ATV should be **warned** to observe more closely the relevant provisions in the TV Programme Code.

In reaching its decision, the CA is conscious of the strong public concern about the presentation of the five Episodes which gave viewers a strong impression that they were an editorial representing ATV's stance on the national education issue in which the views expressed were one-sided and partial. The CA on the other hand attaches great importance to freedom of expression and would respect licensee's editorial autonomy in programme production. For the reasons that the five Episodes were accepted as PVP (albeit marginally), the rule of due impartiality applicable to news or other factual programmes did not apply to the five Episodes in this case.

Nevertheless, as ATV holds a domestic free television programme service licence which allows it to use spectrum, which is a scarce public resource, to provide its broadcasting service, it should provide a television programme service which meets the aspirations of the community as a whole. Whilst the CA has adhered strictly to the relevant provisions of the TV Programme Code, as well as having regard to the need both to treat all parties fairly and to preserve freedom of expression, when considering the complaints, it remains mindful of the serious public concern about programmes presenting the views of a licensee in the form of a PVP. Accordingly, the CA will be reviewing the relevant parts of the TV Programme Code as a matter of priority in order to address the concern.

As the CA has received an exceptionally high volume of complaints in this case, the CA will not issue an individual reply to each of the complainants. Members of the public including the concerned complainants are invited to note details of the CA's decision on the case at the [Appendix](#).

Communications Authority
Secretariat

5 December 2012

Appendix

Details of the Case – Television Programme “ATV Focus” (ATV 焦點) broadcast on the Home and Asia Channels of ATV from 3 to 7 September 2012 at 6:40pm – 6:45pm¹

Over 42,000 members of the public complained against various Episodes of the captioned programme (the “Episodes”). Most of the complaints were against the Episode broadcast on 3 September 2012. The main allegations were –

Concerns over the presentation of the Episodes

- (a) the Episodes were characterized by ATV as personal view programmes (“PVP”), which “are programmes in which the programme hosts, and sometimes, individual contributors put forward their own views” (paragraph 17 of Chapter 9 of the Generic Code of Practice on Television Programme Standards) (“TV Programme Code”). However, no information about the Episodes’ host, the commentator, the script writer, or the production team was provided. As the identity of the speaker was not disclosed, the viewer would not know whether the speaker had a conflict of interest in relation to issues being discussed;
- (b) in the absence of an announcement that the views presented in the Episodes were not those of ATV, the viewers were given the impression that they were. This was a violation of the journalist’s code of practice and the principle that a domestic free television programme service licensee should adopt a neutral stance in the discussions of controversial issues;

¹ The Episodes were repeated at various timeslots including 10:55pm – 11:00pm on the same day and at 8:40am – 8:45am on the next day.

- (c) although the Episodes were characterised by ATV as PVP, they might be regarded as a news or current affairs programmes. The Episodes took the form of essays read out by a voice-over, with the relevant news footage shown on the screen, and were broadcast immediately after the main news bulletin. They failed to comply with the requirement that news should be presented with due impartiality;

Inaccuracy and partiality

- (d) the Episodes contained inaccurate, misleading and unsubstantiated accusations against Scholarism (學民思潮), and individuals who supported the protest against the introduction of national education and pan-democratic groups;
- (e) by presenting unsubstantiated allegations, the Episodes were partial and biased against Scholarism;

No opportunities for response

- (f) the Episodes were unfair to Scholarism and the pan-democratic groups as the individuals, organisations, or groups being criticised were not given an opportunity to respond;

The lack of a broad range of views

- (g) the Episodes presented one-sided opinions and failed to present a broad range of views;

Possible breach of election provisions

- (h) the Episodes, broadcast just several days before the 2012 Legislative Council (“LegCo”) Election, appeared to favour pro-establishment groups and amounted to canvassing for them. This violated the principle of fairness in elections;

Political or Election advertisements

- (i) the Episodes amounted to political advertising for certain political parties and candidates in the 2012 LegCo Election, and could constitute a possible breach of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); and

Political agenda

- (j) the Episodes were produced with a political agenda to brainwash the viewers, disunite the community and incite hatred in society.

The CA’s Findings

In line with its established practice, the CA considered the complaint case and the representations of ATV in detail. The CA took into account the relevant aspects of the case, including (amongst others) the following –

Details of the concerned programme

- (a) the five Episodes could be identified as a PVP by the announcement at the start of each Episode that it only reflected the views of the host(s) or individual contributor(s) (本節目內容只反映主持人或個別參與節目人士之意見，敬請留意);

- (b) in the five Episodes, a voice over commented not only on current significant issues in Hong Kong, such as the protest against the introduction of national education, the imminent 2012 LegCo Election, but also on complaints that had been made about previous Episodes. Corresponding news footage, intercut with flip cards, was shown on the screen;
- (c) in the Episodes broadcast on 3 and 4 September 2012, no information was given regarding the host and commentator or the contributor of the content of the Episodes. In the Episodes broadcast on 5, 6 and 7 September 2012, the pseudonym of the script writer (“撰文：唐文”) was displayed at the start of each Episode together with the Episode title; and
- (d) starting from the Episode broadcast on 5 September 2012, a flip card was displayed at the end of each Episode which included a caption that viewers could express their opinions on the Episode through a forum on the station’s website (要重溫或對節目有任何意見可上亞視網站 www.hkatv.com 《ATV 焦點》節目討論區表述). No end credit or information on the production team was ever given in the five Episodes.

Relevant Provisions of the TV Programme Code

The relevant provisions of the TV Programme Code are:

- (a) paragraph 1 A of Chapter 9 – a licensee shall make reasonable efforts to ensure that the factual contents of news, current affairs

programmes and PVP, etc. are accurate;

- (b) paragraph 17(a) of Chapter 9 - the nature of a PVP in which the programme hosts, and sometimes, individual contributors put forward their own views on matters of public policy or controversial issues of public importance in Hong Kong, must be clearly identified at the start of the programme;
- (c) paragraph 17(b) of Chapter 9 - facts must be respected and the opinion expressed, however partial, should not rest upon false evidence in a PVP;
- (d) paragraph 17(c) of Chapter 9 - a suitable opportunity for response to the programme should be provided in a PVP; and
- (e) paragraph 17(d) of Chapter 9 - licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of PVP.

The CA, having regard to the relevant facts of the case, considered that –

Whether the editorial-like programme could be accepted as a PVP

- (a) there was no “person” present in the five Episodes putting forward his/her own views on the issues concerned. The five Episodes were broadcast using the station’s name in the programme title, “ATV Focus” (ATV 焦點). The views were expressed by a voice-over throughout the five Episodes, no information was given about the production team, and only a pseudonym was given for the script writer in the Episodes starting 5 September 2012. Accordingly,

viewers were given the strong impression that the five Episodes amounted to an editorial representing the stance of ATV. However, there was no announcement that the five Episodes were an editorial representing the views of ATV. Strong public concerns were expressed about ATV's broadcast of an editorial-like programme of this kind;

- (b) the CA noted that the TV Programme Code did not expressly prohibit a licensee from expressing its views in a PVP and was silent on the format and the presentation of a PVP. The CA noted that there was or were individual contributor(s), although they were unnamed, putting forward his or their own opinions in the five Episodes, and that this was in line with the definition of a PVP in paragraph 17 of Chapter 9 of the TV Programme Code. Each Episode was also clearly announced as PVPs, as required under paragraph 17(a) of the same chapter of the TV Programme Code. Taking all the above factors into account, the CA conceded that this was a marginal case in which the five Episodes could be regarded as a PVP and thus they would not be subject to the rule of due impartiality applicable to news and current affairs programmes;

Conflict of interest of programme presenters

- (c) the requirement for disclosure of any potential conflict of interest of programme presenters did not apply as the five Episodes did not have a presenter;

Inaccurate or misleading factual contents

- (d) most of the remarks alleged by the complainants to be inaccurate could be regarded as the writer's perception and speculation. The

exceptions to this were the two factual errors in the Episodes broadcast on 5 September² and 6 September 2012³. The CA considered that these factual errors constituted a breach of paragraph 1A of Chapter 9 of the TV Programme Code;

Impartiality of the programme

- (e) as the programme was labelled as a PVP, and could be marginally accepted as such, it was not subject to the rule of due impartiality applicable to news and current affairs programme. The partial views presented were acceptable as long as they were not based upon false evidence. Although the two factual errors mentioned in (d) above did not appear to have significantly influenced the views expressed, the broadcasting of such inaccurate or misleading content was still in breach of paragraph 17(b) of Chapter 9 of the TV Programme Code;
- (f) regarding fairness, no particular individuals, groups or organisations, except Scholarism, were expressly named in the programme, and the criticism which was made in the five Episodes did not have the effect of damaging the reputation of any specific individuals or organisations;

² The remark “蔡元培當然也反過政府。當他不滿政府時，其(蔡元培)抗議的辦法不是「你不撤回我就死給你看」的絕食，而是辭職” (Mr Cai Yuan-pei had also opposed the government. Nonetheless, his means of opposition was not hunger strike, a threat to the government with his own life, but resignation) from the Episode broadcast on 5 September 2012 was inaccurate as it was well-documented that Mr. Cai was on hunger strike for three days to urge Mr Chiang Kai-shek (蔣介石) to co-operate with the Chinese Communist Party in the war against Japan in 1937.

³ The juxtaposition of a picture of Voltaire and the quote 「我不同意你的觀點，但我誓死捍衛你說話的權利。」 (I disapprove of what you say, but I will defend to the death your right to say it) in the Episode broadcast on 6 September 2012 might mislead viewers into thinking that it was a quote from Voltaire. The quote was in fact to be attributed to Evelyn Beatrice Hall.

Provision of a suitable opportunity for response

- (g) the Episodes did not make it known to the viewing audience before 5 September 2012 that there would be any opportunity to respond. Moreover, the channel of response, which was through a forum on ATV's website, was not appropriate. The channel of response should at least be provided on the same platform (namely on television) and targeting the same audience if it could not be provided within the same programme. Accordingly, ATV had failed to provide a suitable opportunity for response to the five Episodes as required under paragraph 17(c) of Chapter 9 of the TV Programme Code;

The lack of a broad range of views

- (h) despite ATV's representations that different views were presented in two Episodes of the programme back in July 2012, the opinions expressed in the five Episodes which were broadcast on five consecutive days from 3 to 7 September 2012 appeared to be along the same line of accusing some politicians of manipulating the protest against the introduction of national education to gain support in the 2012 Legislative Council Election, of alleging that Scholarism was a pawn of the politicians and claiming that the supporters of the protest could not accept opposing opinions;
- (i) ATV also submitted that a broad range of views on the protest against the introduction of national education were delivered in its programme "News Bar Talk" (把酒當歌) broadcast from 10 to 13 September 2012. The CA noted that while the topic of discussion was "Debate on National Education and Analysis on Post-election

Situation” (國教辯論及選後分析) in the four episodes of “News Bar Talk”, the main focus of the discussion was actually on election tactics. More importantly, as the protest against the introduction of national education ended on 9 September 2012, the broadcast of such views after the protest could not be regarded as evidence of ATV having been mindful of the need for a sufficiently broad range of views to be expressed in the five Episodes;

- (j) as different opinions were expressed in the forum on ATV’s website, rather than in the form of a television broadcast, this could not be considered as ATV having met the requirement under paragraph 17(d) of Chapter 9 of the TV Programme Code for there to be a sufficiently broad range of views in the five Episodes ;

Election advertisements or breach of election provisions

- (k) the election-related complaints had been referred to the relevant enforcement agency, the Electoral Affairs Commission (“EAC”). According to the EAC, there was no evidence to suggest that the five Episodes had breached the relevant election regulations or guidelines under its purview; and

Advertisement of a political nature & political agenda

- (l) the five Episodes commenting on the protest against the introduction of national education should not be regarded as an advertisement of a political nature as they did not have the effect of promoting the interests of any specific political person, group, organisation or party. As for the allegations in relation to political agenda, they were outside the jurisdiction of the CA.

Decision

Having considered the full circumstances of the case and the provisions of the TV Programme Code, the CA decided that the complaints in respect of inaccurate or misleading factual content, failure to provide a suitable opportunity to respond and the lack of a broad range of views on the controversial issues being considered in the five Episodes were **substantiated** and that ATV should be **warned** to observe more closely the requirements of paragraphs 1A, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code.

In reaching its decision, the CA is conscious of the strong public concern about the presentation of the Episodes which gave viewers a strong impression that they were an editorial representing ATV's stance on the national education issue in which the views expressed were one-sided and partial. The CA on the other hand attaches great importance to freedom of expression and would respect the licensee's editorial autonomy in programme production. For the reasons that the five Episodes were accepted as PVP (albeit marginally), the rule of due impartiality applicable to news or other factual programmes did not apply to the five Episodes in this case.

Nevertheless, as ATV holds a domestic free television programme service licence which allows it to use spectrum, which is a scarce public resource, to provide its broadcasting service, it should provide a television programme service which meets the aspirations of the community as a whole. Whilst the CA has adhered strictly to the relevant provisions of the TV Programme Code as well as having regard to the need to treat all parties fairly and to preserve freedom of expression when considering the complaints, it remains mindful of the serious public concern about programmes presenting the views of a licensee in the form of a PVP. Accordingly, the CA will be reviewing the relevant parts of the TV Programme Code as a matter of priority in order to address the concern.



Press Releases (Extract)

Communications Authority Press Release (February)

This press release summarises the Communications Authority (CA)'s decisions following its 17th meeting held in February 2013:

Final Decision on Contraventions by ATV of the TV Programme and Advertising Codes and Licence Condition in respect of its Television Programmes “Caring Hong Kong’s Future” (關注香港未來), “ATV Focus” (ATV 焦點), Two Pieces of Broadcast Materials and “Chimelong Resort Special: Fun at Panyu” (廣州長隆旅遊度假區特約：番禺遊園樂多 FUN)

“Caring Hong Kong’s Future” (關注香港未來)

The CA received close to 2,200 public complaints about the programme broadcast on the Home and Asia Channels of Asia Television Limited (ATV) on 11 November 2012^(Note 1). The major areas of complaint were that:

- a. **Inaccurate Factual Contents**
the programme contents, such as the remarks that the audience rating between ATV and Television Broadcasts Limited (TVB) was in the ratio of 4:6 was misleading and inaccurate;
- b. **One-sided Views, Right of Reply & Opportunity for Response**
the programme included one-sided views against the issuance of new domestic free television programme service licences (free TV licences) and criticisms against a Legislative Council (LegCo) Member, but did not provide suitable opportunities for responses;
- c. **Misuse of Spectrum**
ATV misused the spectrum, a scarce public resource, to promote its own interests; and
- d. **Pre-emption of Children’s Programmes**
the livecast of the gathering was unnecessary and pre-empted the children’s programmes.

In considering the complaints, the CA noted that the programme concerned was a livecast of a gathering against the issuance of new free TV licences which was organised by the Asia Club (亞洲會) and supported by ATV. ATV announced the programme as a personal view programme (PVP) at its start.

While the CA was mindful of the strong public concerns over ATV’s broadcast again of a PVP to express only one-sided views on a controversial issue of public importance in Hong Kong, in particular when ATV appeared to have broadcast the programme concerned to promote its own interests in the issue, the CA noted that the existing Generic Code of Practice on Television Programme Standards (TV Programme Code) did not expressly prohibit a licensee from expressing its views in a PVP. As there were persons expressing their own views on the issue under discussion in the programme, the CA accepted that the programme could be regarded as a PVP.

This notwithstanding, as a PVP, the programme was required to ensure that a certain degree of impartiality was preserved.

On the basis of the above, the CA found that ATV had contravened Chapter 9 of the TV Programme Code governing PVPs by:

- a. failing to provide an appropriate and timely opportunity for those being criticised to respond – in breach of paragraph 16;
- b. making the remarks on the "4:6 TV audience ratio" ("收視人口四六開") with the wording "根據" (English translation: according to) and "其實" (English translation: in fact) in the programme^(Note 2) viz. "根據我哋香港大學民意研究調查電話嘅抽樣調查，其實係舊年亞洲電視同無綫電視已經早現六四開呢個局面，所以一合獨大呢個局面，已經唔再存在喇，大家話係唔係?! (原文略)" would give viewers a wrong perception that the said ratio was part of the data/findings of the telephone survey conducted by the Public Opinion Programme of the University of Hong Kong (HKUPOP) and that the ratio of 4:6 measured the share of TV audience captured by the respective channels as in the case of a traditional TV audience survey – in breach of paragraph 17(b);
- c. failing to provide a suitable opportunity for response to the programme – in breach of paragraph 17(c);
- d. failing to allow a broad range of views to be expressed on the issue about the issuance of free TV licences – in breach of paragraph 17(d); and
- e. failing to fulfill the licence requirement for the broadcast of children's programmes – in breach of Condition 7.1(a) and (b) of the First Schedule of ATV's licence.

The CA noted that this was not the first time that ATV had breached the provisions in the TV Programme Code pertaining to PVPs in particular those on the need to provide a suitable opportunity for response and to allow a broad range of views to be expressed. The CA considered that the breaches in the present case were more serious in nature and in its impact on the viewing public than those in the precedent case concerning the programme "ATV Focus" broadcast from 3 to 7 September 2012, having regard to the duration of the present programme, the frequency of repeated broadcast of the programme, as well as the fact that the programme focused on an issue which ATV has a self-interest.

In respect of the remarks on the "4:6 TV audience ratio", the CA noted ATV's representations that the methodology employed for the HKUPOP survey was not comparable to that adopted in a traditional one, and that HKUPOP only provided the survey data and ATV compiled the said ratio itself based on its own interpretation of the data. However, the said TV audience ratio as presented in the programme, without making known to the viewers the details on the survey methodology and how ATV derived such a ratio from the data of the survey itself, would give an average viewer a wrong impression that (a) the said ratio was part of the data/findings of the HKUPOP survey especially given the remarks of the host contained the wording "根據" (English translation: according to) and "其實" (English translation: in fact); and (b) the ratio of 4:6 measured the share of TV audience captured by the respective channels as in the case of a traditional TV audience survey.

The CA also noted that according to an article prepared by HKUPOP, HKUPOP had never proposed, accepted or agreed to the "4:6 TV audience ratio" as claimed by ATV. HKUPOP had once asked ATV to use the term "viewing rate 收看比率比例" to replace "TV audience share 收視人口比例". The CA was given to understand that Dr Robert Chung of HKUPOP had conveyed again to ATV similar observation on using the term "ratio between viewing rate" rather than

"audience ratio" in the context of the survey for ATV. The way the remarks were presented could not be said to have respected the fact that the relevant ratio was not the data/findings of the HKUPOP survey.

Taking into account the severity, nature and duration of the lapse, the CA decided that a **financial penalty of \$50,000** should be imposed on ATV for breaching paragraphs 16, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code and Condition 7.1(a) and (b) of the First Schedule to ATV's licence.

In reaching its decision on this case, the CA has adhered strictly to the relevant provisions of the TV Programme Code and the licence of ATV and has had regard to the need to treat all parties fairly and to preserve freedom of expression. That said, the CA is fully conscious of the serious public concern about programmes presenting one-sided views to promote the interests of a licensee in the form of a PVP. Accordingly, the CA is reviewing the relevant parts of the TV Programme Code as a matter of priority in order to address the concern.

Apart from the above case, the CA also considered four other complaint cases against ATV-

a. **"ATV Focus" (ATV 焦點) broadcast on the Home and Asia Channels of ATV on 8, 11, 12, 22, 26, 27 November and 5 December 2012**

The CA decided that the concerned programme also presented one-sided views against the issuance of free TV licences without a suitable opportunity for response in the programme and made similar remarks on the "4:6 TV audience ratio". As such, it was also in breach of paragraphs 16, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code. While many episodes of the programme under complaint were broadcast before the CA announced its final decision of similar contravention by ATV on 5 December 2012 regarding the case concerning the issue of national education broadcast in "ATV Focus" from 3 to 7 September 2012, ATV should be fully aware of the strong concern of the public and of the CA on its broadcast of programmes presenting one-sided views on controversial issues of public importance in Hong Kong. Taking into account the repeated lapse and the continued broadcast of the same programme in a manner not complying with the relevant requirements governing PVPs, the CA decided that a **financial penalty of \$50,000** should be imposed on ATV for breaching the aforesaid provisions of the TV Programme Code.

b. **"6:00 News" (六點鐘新聞) & "Late News" (夜間新聞) and certain "Broadcast Materials" broadcast on the Home Channel of ATV on 24 November 2012**

The CA considered that the 4.5-minute "broadcast materials" about the remarks of ATV's Executive Director against the issuance of new free TV licences should be considered as advertisement as they promoted the interest of ATV. The materials broadcast immediately after the news reports were not clearly identifiable as advertisements, which is in breach of paragraph 4 of Chapter 3 of the Generic Code of Practice on the Television Advertising Standards (TV Advertising Code). The CA also considered that the remarks on the "4:6 TV audience ratio" in the materials would give an average viewer an impression that it was a factual claim that the said ratio was part of the data/findings of the HKUPOP survey, which is not the case as explained above in the complaint case concerning ATV's programme "Caring Hong Kong's Future". As the remarks were presented as a factual claim but could not be substantiated, they are in breach of paragraph 1 of Chapter 4 of the TV Advertising Code. The CA considered that the lapse was of a serious nature and decided that the broadcast of the two pieces of advertising materials was in breach of the relevant provisions of the TV Advertising Code and that a **financial penalty of \$50,000** should be imposed on ATV.

c. **“ATV Focus” (ATV 焦點) broadcast on the Home and Asia Channels of ATV on 12 September, 22 & 23 October 2012**

The CA noted that ATV again breached the rules applying to PVPs in particular those on the need to provide a suitable opportunity for response and allow a broad range of views to be expressed. As explained above, the CA considered that ATV should be well aware of the strong concern of the public and of the CA on its broadcast of programmes presenting one-sided views on controversial issues of public importance in Hong Kong. Nonetheless, it still broadcast the same programme in a manner not complying with the relevant requirements governing PVPs. The CA thus decided that a **financial penalty of \$50,000** should be imposed on ATV for breaching paragraphs 1A, 16, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code.

d. **“Chimelong Resort Special: Fun at Panyu” (廣州長隆旅遊度假區特約：番禺遊園樂多 FUN) broadcast on the Home Channel of ATV on 16 September 2012**

The CA noted that there was a clear breach of the provisions governing indirect advertising in programmes and programme sponsorship. In view of the clear breach and taking into account similar precedents and ATV's records of non-compliance with the relevant provisions governing indirect advertising and programme sponsorship, the CA decided that a **financial penalty of \$60,000** should be imposed on ATV for breaching paragraph 1 of Chapter 11 of the TV Programme Code and paragraph 10(a) of Chapter 9 of the TV Advertising Code.

Details of the cases are at [Appendix](#).

Communications Authority

Secretariat

26 February 2013

Notes:

(1) The programme was repeated at various timeslots including 11:55pm on 11 November 2012, 3:05pm on 12 November 2012 and 11:50pm on 15 November 2012 on the Home Channel, and 7:30pm on 12 November 2012 and 12:05am on 15 November 2012 on the Asia Channel.

(2) A host made the remarks that according to the telephone sample survey conducted for ATV by the Public Opinion Programme of the University of Hong Kong (HKUPOP), the ratio (of the audience rating) between ATV and TVB in the previous year (viz. 2011) had reached “six to four” (*sic*), and the situation that there was only one large TV station dominating the market no longer existed.

Appendix

Case 1 – Television Programme “Caring Hong Kong’s Future¹” (關注香港未來) broadcast on the Home and Asia Channels of ATV on 11 November 2012 at 4:01pm – 5:18pm²

Close to 2,200 members of the public complained against the captioned programme. The major areas of complaints were that –

Inaccurate Factual Contents

- (a) the programme contents, such as the remarks that the audience rating between ATV and TVB was in the ratio of 4:6 and that the cessation of the operation of Commercial Television Limited (“CTV”) in the 1970s was due to commercial competition, was misleading and inaccurate;

One-sided Views, Right of Reply & Opportunity for Response

- (b) the programme included one-sided views against the issuance of new free TV licences and criticisms against a LegCo Member, but did not provide suitable opportunities for responses;

Misuse of Spectrum

- (c) ATV misused the spectrum, a scarce public resources, to promote its own interests; and

Pre-emption of Children’s Programmes

- (d) the livecast of the gathering was unnecessary and pre-empted the children’s programmes.

The CA’s Findings

In line with its established practice, the CA considered the complaint case and the representations of ATV in detail. The CA took into account the relevant aspects of the case, including (among others) the following –

¹ English programme name used by ATV.

² The programme was repeated at various timeslots including 11:55pm on 11 November 2012, 3:05pm on 12 November 2012 and 11:50pm on 15 November 2012 on the Home Channel, and 7:30pm on 12 November 2012 and 12:05am on 15 November 2012 on the Asia Channel.

Details of the Case

- (a) the concerned programme was identified as a personal view programme (“PVP”) at its start. It livecast the gathering outside the Central Government Offices against the issuance of new free TV licences, which was organised by the Asia Club (亞洲會) and supported by ATV;
- (b) the programme invited 10 guests, most of them being members of the Asia Club, to speak against the issuance of new free TV licences. A banner with the slogan “關注香港未來! 反對濫發牌照!” (English translation: Care about Hong Kong’s future! Opposition to issuance of excessive free TV licences!) was prominently seen in the backdrop of the stage throughout the programme. Signboards bearing other slogans such as “ATV TVB 收視人口四六開” (English translation: the TV audience rating between ATV and TVB was in the ratio of 4:6), “佳視、壹電視、DBC 前車可鑑” (English translation: CTV, Next TV, DBC, watch the precedents), etc. appealing for non-issuance of new free TV licences were found. A host made the remarks that “根據我哋香港大學民意研究調查電話嘅抽樣調查，其實喺舊年亞洲電視同無綫電視已經呈現六四開呢個局面，所以一台獨大呢個局面，已經唔再存在喇，大家話係唔係?! (原文照錄)” (English translation: according to the telephone sample survey conducted for us by the Public Opinion Programme of the University of Hong Kong (“HKUPOP”), the ratio (of the audience rating) between ATV and TVB in the previous year (viz. 2011) had reached “six to four” (*sic*). The situation that there was only one large TV station dominating the market no longer existed. Don’t you agree?). In presenting the above remarks in the concerned programme, no details were provided about the survey methodology employed by the HKUPOP and how ATV derived such a conclusion from the data of the survey;
- (c) following the female presenter’s elaboration of the slogan “佳視、壹電視、DBC 前車可鑑” (English translation: CTV, Next TV, DBC, watch the precedents), the programme broadcast a pre-recorded footage in which a guest remarked that the collapse of CTV in the 1970s had indicated that the advertising income could not support three domestic free TV stations in Hong Kong and that over-competition would result in vicious competition and close down of TV stations like that in the 1970s;

- (d) towards the end of the programme, a sound clip from another ATV programme "ATV Focus" (ATV 焦點) was broadcast, in which a LegCo Member was criticised for giving biased and untruthful comments that ATV's audienceship was persistently low, the purpose of which was to lead the way to opening up the free TV market and promoting the interest of some particular syndicates;
- (e) ATV's representations that the remark that the TV audience rating between ATV and TVB was in the ratio of 4:6 (the "4:6 TV audience ratio") was based on the data/findings of the TV audience surveys conducted by HKUPOP. ATV also submitted that the methodology employed for the HKUPOP survey was not comparable to that adopted in a traditional one, and that HKUPOP only provided the survey data and ATV compiled the said ratio itself based on its own interpretation of the data. Furthermore, according to the information about the methodology of the survey submitted by ATV to substantiate the "4:6 TV audience ratio", which showed that the aforesaid ratio was calculated based on a question in the telephone survey of HKUPOP, i.e. "請問您過去 7 日有冇睇過【亞視本港台、無綫翡翠台、有線電視任何頻道及 NOW 寬頻電視任何頻道】嘅節目，收睇嘅定義係連續收睇 5 分鐘或以上。包括透過電視機、互聯網、YouTube、手提電話，以及其他方法收睇直播、重播、或者重溫電視節目。" (English translation: did you watch any programme(s) of the Home channel of ATV, the Jade channel of the Television Broadcasts Limited, any channel of the Hong Kong Cable Television Limited and now TV in the past seven days? The definition of "watched" means "having watched continuously for five minutes or above any television programme(s) broadcast live or repeatedly or available in programme archive, through the means including TV set, internet, YouTube, mobile phones or any other means"); and
- (f) while ATV claimed that the re-scheduling of children's programmes was covered by the blanket approval of the former Broadcasting Authority ("BA") dated 3 February 2005, ATV re-scheduled the pre-empted children's programmes to timeslots before the original timeslots, instead of timeslots within the immediate following three days in accordance with the conditions of the blanket approval.

Relevant Provisions

The relevant provisions in the TV Programme Code are -

- (a) Paragraph 16 of Chapter 9 – where a factual programme reveals evidence of iniquity or incompetence or contains a damaging critique of an individual or organisation, those criticised should be given an appropriate and timely opportunity to respond;
- (b) Paragraph 17(b) of Chapter 9 – for a PVP in which the programme hosts and individual contributors put forward their own views on matters of public policy or controversial issues of public importance in Hong Kong, facts must be respected and the opinions expressed, however partial, should not rest upon false evidence;
- (c) Paragraph 17(c) of Chapter 9 – a suitable opportunity for response to the programme should be provided in a PVP mentioned above; and
- (d) Paragraph 17(d) of Chapter 9 – licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of the PVP mentioned above.

The relevant condition of the Domestic Free Television Programme Service Licence of ATV is -

Children's Programmes

- (e) Condition 7.1 of the First Schedule Subject to any directions issued by the CA, the Licensee shall provide –
 - (a) two blocks of children's programmes of a minimum period of :
 - (i) 1.5 hours daily on each language service between 4:00 pm and 7:00 pm and
 - (ii) 30 minutes daily on each language service between 9:00 am and 7:00 pm; and
 - (b) on the Chinese language service, at least 30 minutes of programmes daily which are wholly of Hong Kong origin in the blocks of children's programmes referred to in paragraph (a)(i).

The CA's Considerations

The CA, having regard to the relevant facts of the case, considered that –

Nature of the Programme

- (a) the contents of the concerned programme were in line with the definition of a PVP under the TV Programme Code. Noting that the current TV Programme Code does not expressly prohibit a licensee from expressing its views in a PVP, the CA considered that the programme could be regarded as a PVP and should comply with the relevant rules governing PVP;

Inaccurate Factual Contents

- (b) as regards the allegation that the remarks on the “4:6 TV audience ratio” were inaccurate, the CA noted that the programme contained the remarks of a programme host that “根據我哋香港大學民意研究調查電話嘅抽樣調查，其實舊年(i.e. 2011)亞洲電視同無綫電視已經呈現六四開呢個局面，所以一獨大呢個局面，已經唔再存在喇!”(原文照錄)” (English translation: according to the telephone sample survey conducted for us by the Public Opinion Programme of the University of Hong Kong (“HKUPOP”), the ratio (of the audience rating) between ATV and TVB in the last year (viz. 2011) in fact had reached “six to four” (*sic*). The situation that there was only one large TV station dominating the market no longer existed). The relevant remarks were also found in the sound clip from another ATV programme “ATV Focus” (ATV 焦點) which was broadcast in the programme under concern.

Moreover, according to the relevant survey data and information submitted by ATV as substantiation for the above mentioned remarks, the CA noted that –

- (i) the survey conducted by the HKUPOP measured whether a channel had been viewed for at least five minutes within a specified seven-day period (referred hereafter as the “viewing rate”). It covered one’s viewing on different media platforms including regular TV, digital TV, internet and mobile device;
- (ii) TV audience share and viewing rate were two different concepts and not necessarily related. A channel viewed by a large

number of audience but for very short periods would have high viewing rate, but not necessarily a high TV audience share;

- (iii) according to the data of the concerned survey of the HKUPOP, the viewing rate of TVB Jade had remained at about 90% since 2011 and that of ATV Home had been about 40% to 70%. ATV compiled and analysed the above data of the HKUPOP survey itself to draw up the ratio, viz. "4:6 TV audience ratio" (收視人口四六開); and
- (iv) according to the article "「四六開」與「零收視」" prepared by HKUPOP included in the magazine "Media Digest" (傳媒透視)³, HKUPOP had never proposed, accepted or agreed to the "4:6 TV audience ratio" as claimed by ATV. HKUPOP had asked ATV to use the term "viewing rate 收看比率比例" to replace "TV audience share 收視人口比例". The CA was given to understand that Dr Robert Chung of HKUPOP had conveyed again to ATV similar observation on using the term "ratio between viewing rate" rather than "audience ratio" in the context of the survey for ATV.

On the basis of the above, the CA was concerned that –

- (i) the remarks made by a programme host (i.e. "根據我哋香港大學民意研究調查電話嘅抽樣調查，其實舊年(i.e. 2011)亞洲電視同無綫電視已經呈現六四開(sic)呢個局面，所以一台獨大呢個局面，已經唔再存在喇") with the wording "根據" and "其實" would give viewers a wrong perception that the "4:6 TV audience ratio" was part of the data/findings of the telephone survey of the HKUPOP which is not the case as explained above. The way the remarks on the "4:6 TV audience ratio" were presented in the programme could not be said to have respected the fact that the relevant ratio was not the data/findings of the HKUPOP survey and was hence in breach of paragraph 17(b) of Chapter 9 of the TV Programme Code; and

³ The Magazine which was published by Radio Television Hong Kong ("RTHK") in January 2013 is available on RTHK's website.

- (ii) as submitted by ATV, the methodology employed for the HKUPOP survey was not comparable to that adopted in a traditional one. The presentation of the concerned remarks, without providing details on the methodology of the HKUPOP survey and how ATV derived the "4:6 TV audience ratio" from the data of the HKUPOP survey, would also give viewers a wrong impression that it measured the share of TV audience captured by the respective channels as in the case of a traditional TV audience survey;
- (c) concerning the guest's remarks on the cause of the cessation of the operation of CTV in the 1970s, the CA considered that the concerned remarks were the personal opinions of the relevant guest, and there was no evidence that they were based on false evidence;

One-sided Views, Right of Reply & Opportunity for Response

- (d) the programme presented only one-sided views against the issuance of new free TV licences and criticisms against the LegCo Member but did not provide any suitable opportunities for response, and therefore was in breach of paragraph 17(c) of Chapter 9 of the TV Programme Code. For the criticisms against the LegCo Member, the CA considered that while the negative comments per se were not unacceptable in a PVP, the fact that the person criticised was not given an appropriate and timely opportunity to respond was also in breach of paragraph 16 of Chapter 9 of the TV Programme Code;
- (e) after the programme under complaint, ATV had broadcast a series of programmes strongly opposing to the issuance of new free TV licences. The CA considered that the requirement for arranging a sufficiently broad range of views to be expressed under paragraph 17(d) of Chapter 9 of the TV Programme Code was violated;

Misuse of Spectrum

- (f) the CA noted the strong public concern about ATV's use of spectrum to promote its interest. Nonetheless, there is currently no specific provision governing the subject matter; and

Pre-emption of Children's Programmes

- (g) the three pre-empted children's programmes were re-scheduled to timeslots before the scheduled time. As announcements of the re-scheduling were made before the pre-empted programmes, viewers of the programmes would likely miss them which had been broadcast at

an earlier time. The compensation arrangement thus did not serve the purpose of the programming requirement of children's programmes and could not fulfill the condition of the former BA's relevant blanket approval. The CA hence considered that ATV was in breach of Condition 7.1 (a) and (b) of the First Schedule to ATV's licence on the requirements for broadcast of children's programmes.

In considering this case, the CA was mindful of the strong public concerns over ATV's broadcast again of a PVP to express only one-sided views on a controversial issue of public importance in Hong Kong, in particular when ATV appeared to have broadcast the programme concerned to promote its own interests in the issue. Notwithstanding the lack of express prohibition on expression of licensee's views in a PVP, ATV should provide a television programme service that meets the aspiration of the community as a whole. While programme hosts and individual contributors may express their own views on controversial issues in a PVP which is clearly identified as such, the licensees should ensure that the basic rules applying to PVPs set out in paragraph 17 of Chapter 9 of the TV Programme Code would be complied with to preserve a certain degree of impartiality in PVPs, which include (i) facts must be respected and the opinion expressed should not rest upon false evidence; (ii) the provision of a suitable opportunity for response to the programme; and (iii) the need for a sufficiently broad range of views to be expressed in any series of PVPs. In this case, ATV has failed to comply with all the aforesaid rules governing a PVP.

Decision

Having considered the full circumstances of the case and in view of the above, the CA decided that the following aspects of the complaints justified-

- (a) the programme did not provide an appropriate and timely opportunity for those being criticised to respond, as required under paragraph 16 of Chapter 9 of the TV Programme Code;
- (b) the remarks on the "4:6 TV audience ratio" as presented in the programme, with the wording "根據" (English translation: according to) and "其實" (English translation: in fact), would give viewers a wrong perception that the said ratio was part of the data/findings of the telephone survey conducted by the HKUPOP and that the ratio of 4:6 measured the share of TV audience captured by the respective channels

as in the case of a traditional TV audience survey, thus in breach of paragraph 17(b) of Chapter 9 of the TV Programme Code;

- (c) the programme failed to provide a suitable opportunity for response to the programme as required under paragraph 17(c) of Chapter 9 of the TV Programme Code;
- (d) ATV failed to arrange a sufficiently broad range of views to be expressed on a controversial issue as required under paragraph 17(d) of Chapter 9 of the TV Programme Code; and
- (e) ATV failed to fulfill the licence requirement for the broadcast of children's programmes.

The CA noted that this was not the first time that ATV had breached the provisions in the TV Programme Code pertaining to PVPs in particular those on the need to provide a suitable opportunity for response and to allow a broad range of views to be expressed. While the programme under complaint was broadcast before the CA announced its final decision of similar contravention by ATV on 5 December 2012 regarding the case concerning the issue of national education broadcast in "ATV Focus" from 3 to 7 September 2012, ATV should be fully aware of the strong concern of the public and of the CA on its broadcast of programmes presenting one-sided views on controversial issues of public importance in Hong Kong. The CA considered that the breaches in the present case were more serious in nature and in its impact on the viewing public than those in the precedent case mentioned above, having regard to the duration of the present programme, the frequency of repeated broadcast of the programme, as well as the fact that the programme was focused on an issue where ATV has a self-interest. Taking into account the severity, nature and duration of the lapse, the CA decided that a **financial penalty of \$50,000** should be imposed on ATV for breaching paragraphs 16, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code and Condition 7.1(a) and (b) of the First Schedule to ATV's licence.

Case 2 – Television Programme "ATV Focus" (ATV 焦點) broadcast on the Home and Asia Channels of ATV on 8, 11, 12, 22, 26, 27 November and 5 December 2012 at 6:40 pm - 6:45 pm and/or 10:55 pm -11:00 pm

18 members of the public complained about the concerned episodes of the captioned programme. The main areas of the complaints were that-

Inaccurate Factual Contents

- (a) the remarks that according to the survey conducted by the HKUPOP, the audience rating between ATV and TVB was in the ratio of 4:6 departed from truth and was a misinterpretation of the relevant survey conducted by HKUPOP (8 and 11 November Episodes);

An Appropriate and Timely Opportunity for those Criticised to Respond

- (b) there were criticisms against a LegCo Member (8 November Episode), and the Chairman of a free TV licence applicant and a public relations adviser (27 November Episode) but the programme did not provide suitable opportunities for the above persons to respond; and

Lack of Opportunities for Response and One-sided Views

- (c) the programme presented only one-sided views against the issuance of new free TV licences but failed to provide a suitable opportunity for response to the programme.

The CA's Findings

In line with the established practice, the CA considered the complaint case and the representations of ATV in detail. The CA took into account the relevant aspects of the case, including (among others) the following –

Details of the Case

- (a) the concerned programme was identified as a personal view programme (“PVP”);
- (b) the seven episodes under complaint presented comments against the grant of free TV licences and/or criticisms on an applicant for a free TV licence and its staff in a voice-over. The alleged criticisms against the LegCo Member, the Chairman of a free TV licence applicant and the public relations adviser were found in the episodes broadcast on 8 and 27 November 2012 respectively;
- (c) the alleged inaccurate remarks on the “4:6 TV audience ratio” were found in the episodes broadcast on 8 and 11 November 2012. In presenting the above remarks in the concerned episodes of the programme, no details were provided about the survey methodology employed by the HKUPOP and how ATV derived such a conclusion from the data of the survey; and

- (d) the name of the same script writer was displayed at the start of all the concerned episodes, except those broadcast on 11 and 12 November 2012⁴. All the seven episodes ended with a caption that viewers could express their opinions on the programme on the forum of the station's website.

Relevant Provisions

The relevant provisions in the TV Programme Code are –

- (a) Paragraph 16 of Chapter 9 – where a factual programme reveals evidence of iniquity or incompetence or contains a damaging critique of an individual or organisation, those criticised should be given an appropriate and timely opportunity to respond;
- (b) Paragraph 17(b) of Chapter 9 –for a PVP in which the programme hosts and individual contributors put forward their own views on matters of public policy or controversial issues of public importance in Hong Kong, facts must be respected and the opinion expressed, however partial, should not rest upon false evidence in a PVP;
- (c) Paragraph 17(c) of Chapter 9 – a suitable opportunity for response to the programme should be provided in a PVP; and
- (d) Paragraph 17(d) of Chapter 9 –licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of PVP.

The CA's Considerations

The CA, having regard to the relevant facts of the case, considered that –

Nature of the Programme

- (a) as the TV Programme Code was silent on the format and presentation of a PVP and did not expressly prohibit a licensee from expressing its views in a PVP, the episodes under complaint in which there were excerpts of individuals or a voice-over of an individual putting forward

⁴ The 11 November Episode, which presented a letter to the Chief Executive by the Asia Club (亞洲會), was displayed as written by the Asia Club. The 12 November Episode, which showed extracts of the gathering of ATV staff and members of the Asia Club on 11 November 2012 appealing for non-issuance of free TV licences, did not indicate the name of any particular writer.

the views on the issues under concern could be marginally accepted as a PVP under the TV Programme Code and should therefore be subject to the relevant rules governing PVPs in the TV Programme Code;

Inaccurate Factual Contents

(b) regarding the allegation on inaccurate contents on the TV audience ratio, the CA noted the following relevant remarks-

- (i) “香港大學研究中心是定期對兩家免費電視台進行收視調查的，據過去一年多的跟蹤數據顯示，兩家電視台的收視人口，一直在四六比之間輕微浮動” (English translation: HKUPOP conducted survey on the audience rating of the two domestic free TV stations at regular intervals. According to the tracking data of the survey in the past year (viz. 2011), the ratio of the audience rating between the two free TV stations always fluctuated slightly around “four to six”) broadcast in the episode on 8 November 2012, and
- (ii) “根據香港大學民意研究計劃之電話抽樣調查，去年亞洲電視與無綫電視的收視人口呈四六開格局，所謂「一台獨大」，已不復存在” (English translation: according to HKUPOP’s telephone sample survey, the ratio (of the audience rating) between ATV and TVB in the last year (viz. 2011) had reached “four to six”. The so-called “one large TV station dominating the market” no longer existed“ broadcast in the episode on 11 November 2012.

Moreover, according to the relevant survey data and information submitted by ATV as substantiation for the above mentioned remarks, the CA noted that –

- (i) the survey conducted by the HKUPOP measured whether a channel had been viewed for at least five minutes within a specified seven-day period (referred hereafter as the “viewing rate”). It covered one’s viewing on different media platforms including regular TV, digital TV, internet and mobile device;
- (ii) TV audience share and viewing rate were two different concepts and not necessarily related. A channel viewed by a large number of audience but for very short periods would have high viewing rate, but not necessarily a high TV audience share;

- (iii) according to the data of the concerned survey of the HKUPOP, the viewing rate of TVB Jade had remained at about 90% since 2011 and that of ATV Home had been about 40% to 70%. ATV compiled and analysed the above data of the HKUPOP survey itself to draw up the ratio, viz. "4:6 TV audience ratio" (收視人口四六開); and
- (iv) according to the article "「四六開」與「零收視」" prepared by HKUPOP included in the magazine "Media Digest" (傳媒透視)⁵, HKUPOP had never proposed, accepted or agreed to the "4:6 TV audience ratio" as claimed by ATV. HKUPOP had asked ATV to use the term "viewing rate 收看比率比例" to replace "TV audience share 收視人口比例". The CA was given to understand that Dr Robert Chung of HKUPOP had conveyed again to ATV similar observation on using the term "ratio between viewing rate" rather than "audience ratio" in the context of the survey for ATV.

On the basis of the above, the CA was concerned that - ;

- (i) the remarks as presented in the programme concerned i.e. "香港大學研究中心是定期對兩家免費電視台進行收視調查的，據過去一年多的跟蹤數據顯示，兩家電視台的收視人口，一直在四六比之間輕微浮動" and "根據香港大學民意研究計劃之電話抽樣調查，去年亞洲電視與無綫電視的收視人口呈四六開格局，所謂「一台獨大」，已不復存在" with the wording "據" and "根據" (English translation: according to) would give viewers a wrong perception that the "4:6 TV audience ratio" was part of the data/findings of the telephone survey of the HKUPOP which is not the case as explained above. The way the remarks on the "4:6 TV audience ratio" were presented in the programme could not be said to have respected the fact that the relevant ratio was not the data/findings of the HKUPOP survey and was hence in breach of paragraph 17(b) of Chapter 9 of the TV Programme Code; and
- (ii) as submitted by the ATV, the methodology employed for the HKUPOP survey was not comparable to that adopted in the traditional one. The presentation of the concerned remarks, without providing details on the methodology of the HKUPOP

⁵ The Magazine which was published by RTHK in January 2013 is available on RTHK's website.

survey and how ATV derived the "4:6 TV audience ratio" from the data of the HKUPOP survey, would also give viewers a wrong impression that it measured the share of TV audience captured by the respective channels as in the case of a traditional TV audience survey.

An Appropriate and Timely Opportunity for those Criticised to Respond

- (c) regarding the right of reply of those criticised, the programme made negative comments against the LegCo Member in the 8 November 2012 Episode and the Chairman of a free TV licence applicant and a public relations adviser in the 27 November 2012 Episode suggesting evidence of iniquity of them, but failed to provide an appropriate and timely opportunity for them to respond, thus in breach of paragraph 16 of Chapter 9 of the TV Programme Code;

Suitable Opportunity for Response to the Programme

- (d) the channel for response provided by the programme, which was through a forum on ATV's website, was not appropriate. It had been considered by the CA in a precedent case concerning the episodes of the same programme broadcast from 3 to 7 September 2012 that the channel of response should at least be provided on the same platform (namely on television) and targeting the same audience if it could not be provided within the same programme. Hence, ATV was in breach of paragraph 17(c) of Chapter 9 of the TV Programme Code; and

One-Sided Views

- (e) the seven episodes, though with different emphasis, were along the same line which expressed strong opposition against the issuance of free TV licences, failing to comply with paragraph 17 (d) of Chapter 9 of the TV Programme Code which stipulates that licensees should be mindful of the need for a sufficiently wide range of views to be expressed in any series of PVP.

Decision

The CA noted that this was not the first time that ATV had breached the rules applying to PVPs in particular those on the need to provide a suitable opportunity for response and allow a broad range of views to be expressed. While many episodes of the programme under complaint were broadcast before the CA announced its final decision of similar contravention by ATV

on 5 December 2012 regarding the case concerning the issue of national education broadcast in "ATV Focus" from 3 to 7 September 2012, ATV should be fully aware of the strong concern of the public and of the CA on its broadcast of programmes presenting one-sided views on controversial issues of public importance in Hong Kong. In view of the above and taking into account the repeated lapse and the continued broadcast of the same programme in a manner not complying with the relevant requirements governing PVPs, the CA decided that a **financial penalty of \$50,000** should be imposed on ATV for breaching paragraphs 16, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code.

Case 3 - Television Programmes "6:00 News" (六點鐘新聞) & "Late News" (夜間新聞) broadcast on the Home Channel of ATV on 24 November 2012 at 6:00pm & 11:15pm, and certain "Broadcast Materials" shown on the same channel and date at 6:13pm & 11:31pm

Seven members of the public complained about the television programmes and certain "Broadcast Materials" concerning the gathering of ATV's staff outside ATV's headquarters to receive a petition from a netizen, and the remarks of ATV's Executive Director against the issuance of new free TV licences. The major areas of complaints were that –

- (a) the reports of the gathering in the two news programmes and the "Broadcast Materials" were partial, including only one-sided views from ATV's Executive Director against the issuance of free TV licences and his criticisms against an applicant for the free TV licence;
- (b) the remarks of ATV's Executive Director in the reports against the Chairman of a free TV licence applicant, amounted to personal attack;
- (c) ATV's repeated broadcasts of the news on the gathering in the "Broadcast Materials" within a few seconds after a similar report on the same gathering made in the news programmes amounted to misuse of public air-time to promote ATV's own interests;
- (d) the repeated broadcast of the concerned news reports promoted ATV's stance against the issuance of new free TV licences and appeared to be advertising material; and
- (e) the "Broadcast Materials" were neither advertisements for the sale of

products or services, nor materials for the promotion of ATV's station and/or programme service. As such, they should be considered as programmes not shown in accordance with ATV's programme schedules, which were programme changes without announcements.

The CA's Findings

In line with the established practice, the CA considered the complaint case and the representations of ATV in detail. The CA took into account the relevant aspects of the case, including (among others) the following –

Details of the Case

- (a) both the news reports and the "Broadcast Materials" were about the same gathering under concern. In the news reports, ATV's Executive Director reiterated his objection against the issuance of new free TV licences, and alleged that Chairman of a free TV licence applicant obtained confidential information from ATV when he was the Chief Executive Officer ("CEO") of ATV for 12 days, and used them for the operation of a TV station;
- (b) in both news programmes, the concerned news reports were followed by headlines of upcoming news in the following segment and then the 4.5-minute "Broadcast Materials". More details about the remarks of ATV's Executive Director mentioned in (a) above were included in the "Broadcast Materials". He also referred to the TV audience survey conducted by the Public Opinion Programme of the University of Hong Kong ("HKUPOP") about the "4:6 TV audience ratio" between ATV and TVB with the remarks "要信都信番香港大學嘅鍾庭耀先生/博士嘅民意調查，六四開，呢個第一" (English translation: one should believe the (findings of the survey) of HKUPOP's Mr/Dr Robert Chung. The ratio of 6 to 4 (in the TV audienceship). This is Number One). In the voice-over, there were remarks⁶ highlighting ATV's stance against the issuance of the free TV licences and appealed to the Chief Executive on the issue; and
- (c) ATV submitted that the concerned 4.5-minute "Broadcast Materials" were station promotions which promoted the station's stance against

⁶ In the voice-over, there were the remarks "為嚴正處理與及回應是次行動，亞視約百多名員工、亞洲先生、亞洲小姐以及亞洲會成員等都同心協力，以萬眾一心嘅態度以及行動重申反對政府濫發牌照嘅意願，以及維護香港媒體健康發展" at the start and "亞洲電視懇請特首梁振英認真考慮，否決增發牌照嘅迫切性及重要性" near the end of the "Broadcast Materials".

the issuance of free TV licences and hence the station's interests.

Relevant Provisions

The relevant provisions in the TV Advertising Code are –

- (a) Paragraph 4 of Chapter 3 – advertising material should be clearly identifiable as an advertisement; and
- (b) Paragraph 1 of Chapter 4 – all factual claims in advertisements should be capable of substantiation.

The CA's Considerations

The CA, having regard to the relevant facts of the case, considered that –

Partial News Reports

- (a) there was coverage of both views for and against the issuance of new free TV licences in both news programmes. The presentation of the news items was by and large impartial;

Fairness in News

- (b) the CA noted that the response from the Chairman of a free TV licence applicant denying the allegations of ATV's Executive Director was published subsequent to the broadcast of the concerned news item in the "6:00 News" and his denial was included in the "Late News" to conclude the news item. The news item in both news programmes could be considered as an updated and factual coverage of the allegations and the response from the concerned person. Thus no case was made out regarding fairness in news programmes;

Misuse of Public Air-time & Advertising Materials

- (c) regarding the nature of the concerned 4.5-minute "Broadcast Materials" with an ending appeal against the issuance of free TV licences, the CA considered that their purposes as submitted by ATV (viz. promotion of the station's stance on a controversial issue and its interests in the issue) were not in line with the definition of station promotions under the TV Advertising Code. Rather, they should be considered as "advertisements" as defined under paragraph 1 of Chapter 2 of the TV

Advertising Code⁷, and should be subject to the advertising time limits applicable to the domestic free television programme services⁸;

Identification of Advertising Material

- (d) although the “Broadcast Materials” were shown as the first item in the commercial break following the news item, there were clear demarcation between the news programmes and the said Materials. It was clear that the “Broadcast Materials” were not part of the news programmes. However, the said “Broadcast Materials” as presented were not clearly distinguishable as advertisements, which was in breach of paragraph 4 of Chapter 3 of the TV Advertising Code governing identification of advertisements;

Substantiation of Factual Claim

- (e) as regards the remarks of ATV’s Executive Director on the “4:6 TV audience ratio” delivered in the “Broadcast Materials”, the CA considered that the remarks would give an average viewer the impression that it was a factual claim, i.e. the said TV audience ratio was part of the data/findings of the survey conducted by HKUPOP. Nonetheless, the CA noted from HKUPOP’s article “「四六開」與「零收視」” (“the Article”)⁹ that the “4:6 TV audience ratio” was not part of the data/findings of the HKUPOP’s survey. In the Article, HKUPOP clearly stated that HKUPOP had never proposed, accepted or agreed to the “4:6 TV audience ratio” as claimed by ATV and had encouraged ATV to publicise all data of the relevant survey. The Article also pointed out among others that since 2011, TVB Jade’s viewing rate (收看比率) had remained at about 90% in a week, whereas ATV Home’s viewing rate was about 40% to 70%. Under the above circumstances, the CA considered that the perceived factual claims on the TV audience ratio made in the “Broadcast Materials”, which were advertisements as defined under the TV Advertising Code, could not be substantiated. Thus the said advertisements were in breach of paragraph 1 of Chapter 4 of the TV Advertising Code governing substantiation of factual claims; and

⁷ Paragraph 1 of Chapter 2 of the TV Advertising Code provides that “advertisement or advertising material means any material included in a television programme service which is designed to, among others, promote the interests of any organisation”.

⁸ In this case, there was no breach of the relevant provisions governing the advertising time limit if the “Broadcast Materials” were counted as advertisements.

⁹ The Article was included in the magazine “Media Digest” (傳媒透視) published by RTHK in January 2013.

Programme Changes without Announcement

- (f) the concerned "Broadcast Materials" were considered as advertising materials, thus the provision on programme change announcements was not applicable.

Decision

Having considered the full circumstances of the case and the relevant provisions, the CA considered that the lapse was of a serious nature and decided that a **financial penalty of \$50,000** should be imposed on ATV for breaching paragraph 4 of Chapter 3 and paragraph 1 of Chapter 4 of the TV Advertising Code.

Case 4 – Television Programme "ATV Focus" (ATV 焦點) broadcast on the Home and Asia Channels of ATV on 12 September, 22 & 23 October 2012 at 6:40 pm-6:45 pm & 10:55 pm-11:00 pm

20 members of the public complained about the concerned episodes of the captioned programme. The main areas of complaints were that-

Inaccurate Factual Contents

- (a) the programme contained inaccurate, misleading and unsubstantiated accusations against a media company's Chairman whose business included the publication of a local newspaper (referred hereafter as "the newspaper publisher");

Right of Reply

- (b) the programme was partial and biased against the newspaper publisher by presenting unsubstantiated allegations;

Opportunity for Response

- (c) the programme failed to provide a suitable opportunity for response; and

Broad Range of Views

- (d) the programme presented one-sided opinions and failed to present a broad range of views and discussion.

The CA's Findings

In line with the established practice, the CA considered the complaint case and the representations of ATV in detail. The CA took into account the relevant aspects of the case, including (among others) the following –

Details of the Case

- (a) the concerned programme was identified as a personal view programme (“PVP”);
- (b) in the three episodes under complaint, criticisms on the newspaper publisher and comments on his selling of the media business in Taiwan were presented in a voice-over with relevant news footage. While there were a lot of negative comments against the concerned person and his media business¹⁰, no remarks or responses made by the concerned person were found in the programme; and
- (c) the name of the same script writer was displayed at the start of the programme. The ending flip card included a caption that viewers could express their opinions on the programme on the forum of the station's website.

Relevant Provisions in the TV Programme Code

- (a) Paragraph 1A of Chapter 9 – the licensees shall make reasonable efforts to ensure that the factual contents of PVPs, among others, are accurate;
- (b) Paragraph 16 of Chapter 9 – where a factual programme reveals evidence of iniquity or incompetence or contains a damaging critique of an individual, those criticised should be given an appropriate and timely opportunity to respond;
- (c) Paragraph 17(b) of Chapter 9 – for a PVP in which the programme hosts and individual contributors put forward their own views on matters of public policy or controversial issues of public importance in

¹⁰ Examples of the remarks included: “罪魁禍首”, “無品無良的商人”, “社會的禍害”, “沒有人性的人辦”, “港媒亂台” in the 12 September 2012 Episode; “眼中只有金錢、心中沒有人性的商人”, “他的那一套「只要做甚麼能賺錢, 我就做甚麼」的反人性、反道德營商哲學”, “香港市民和傳媒業界要小心了……使他們(孩子們)庶幾免受黎智英旗下傳媒的茶毒” in the 22 October 2012 Episode, and “厚顏無恥地說出「只要反共能賺錢, 我就反共」和「只有沒有人性的人才能做傳媒」的無品商人”; “唯利是圖, 使他旗下的媒體成為危害社會的毒物” in the 23 October 2012 Episode.

Hong Kong, facts must be respected and the opinion expressed, however partial, should not rest upon false evidence in a PVP;

- (d) Paragraph 17(c) of Chapter 9 – a suitable opportunity for response to the programme should be provided in a PVP; and
- (e) Paragraph 17(d) of Chapter 9 – licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of PVP.

The CA's Considerations

The CA, having regard to the relevant facts of the case, considered that –

- (a) *Nature of the Programme*
as the TV Programme Code was silent on the format and presentation of a PVP and did not expressly prohibit a licensee from expressing its views in a PVP, the episodes under complaint in which there was only a voice-over of an individual putting forward the views on the issue under concern could be marginally accepted as a PVP under the TV Programme Code and should therefore be subject to the relevant rules governing PVPs in the TV Programme Code;
- (b) *Inaccurate Factual Contents*
regarding accuracy, the CA noted that the programme had presented the remarks¹¹ “只有沒有人性的人才能辦/做傳媒” (English translation: only those persons without humanity could operate/work in the media industry) and “只要反共能賺錢，我就反共” (English translation: if opposing the communism could gain money, I will oppose it) as direct quotations of the newspaper publisher, while such sentences could only be found in secondary sources submitted in ATV's representations. ATV also failed to provide any evidence that it had checked the accuracy of the quotation of these remarks as the newspaper publisher's

¹¹ The relevant voice-over was that the newspaper publisher “說過，「只有沒有人性的人才能辦傳媒」” in the 12 September 2012 Episode and “這個能厚顏無恥地說出「只要反共能賺錢，我就反共」和「只有沒有人性的人才能做傳媒」的無品商人，真的是在監督政府嗎？” in the 23 October 2012 Episode of the programme.

words¹² as claimed in the secondary sources. The CA considered that ATV, by quoting a secondary source which might not be reliable without consideration of the context in which the remarks were actually made, had not made reasonable efforts to ensure the relevant factual contents of the PVP were accurate and facts were not respected in the expression of the relevant remarks in the PVP. ATV was thus in breach of paragraphs 1A and 17(b) of Chapter 9 of the TV Programme Code;

Right of Reply

- (c) regarding the right of reply of those criticised, the programme had made strong criticisms against the newspaper publisher's integrity, suggesting evidence of iniquity of him, but failed to provide an appropriate and timely opportunity for him to respond, thus in breach of paragraph 16 of Chapter 9 of the TV Programme Code;

Opportunities for Response to the Programme

- (d) the channel for response provided by the programme, which was through a forum on ATV's website, was not appropriate. It had been considered by the CA in the precedent case concerning the episodes of the same programme broadcast from 3 to 7 September 2012 that the channel of response should at least be provided on the same platform (namely on television) and targeting the same audience if it could not be provided within the same programme. Hence, ATV was in breach of paragraph 17(c) of Chapter 9 of the TV Programme Code; and

One-Sided Views

- (e) the episodes under complaint presented similar views and criticisms against the newspaper publisher, failing to comply with paragraph 17 (d) of Chapter 9 of the TV Programme Code which stipulates that licensees should be mindful of the need for a sufficiently wide range of views to be expressed in any series of PVP.

¹² In respect of the remarks “只有沒有人性的人才能辦傳媒” and “只有沒有人性的人才能做傳媒”, as quoted from some secondary sources, they were presented as direct quotations of the newspaper publisher even though the primary source (viz. the newspaper publisher's autobiography) of the relevant remarks of the newspaper publisher (viz. “我本來就沒有人性，很多事情對我不重要，所以我適合做傳媒”) was also available to ATV and the newspaper publisher's remarks in the primary source were apparently made under different context. Moreover, in respect of the remark “只要反共能賺錢，我就反共”，ATV had not provided any evidence that the newspaper publisher had really made the remark as claimed by a secondary source and that ATV had checked the accuracy of the quotations.

Decision

The CA noted that this was not the first time that ATV had breached the rules applying to PVPs in particular those on the need to provide a suitable opportunity for response and allow a broad range of views to be expressed. While the episodes of the programme under complaint were broadcast before the CA announced its final decision of similar contravention by ATV on 5 December 2012 regarding the case concerning the issue of national education broadcast in "ATV Focus" from 3 to 7 September 2012, ATV should be fully aware of the strong concern of the public and of the CA on its broadcast of programmes presenting one-sided views on controversial issues of public importance in Hong Kong. In view of the above and taking into account the repeated lapse and the continued broadcast of the same programme in a manner not complying with the relevant requirements governing PVPs, the CA decided that a **financial penalty of \$50,000** should be imposed on ATV for breaching paragraphs 1A, 16, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code.

Case 5 – Television Programme "Chimelong Resort Special: Fun at Panyu" (廣州長隆旅遊度假區特約：番禺遊園樂多 FUN) broadcast on the Home Channel of ATV on 16 September 2012 at 7:00 pm – 7:30 pm

A member of the public complained that the programme, which was filmed entirely on location at a sponsor's theme park, was solely designed to promote the theme park, devoid of any real content and tantamount to an advertisement.

The CA's Findings

In line with the established practice, the CA considered the complaint case and the representations of ATV in detail. The CA took into account the relevant aspects of the case, including (among others) the following –

Details of the Case

- (a) a resort in Panyu, Guangzhou was the programme and product sponsors of the 30-minute travelogue on the sponsor's theme park which was filmed entirely on location at the sponsor's theme park, featuring a male artiste guiding a group of artistes to the theme park;

- (b) at the beginning of the programme, the artistes highlighted the convenient transportation link between Panyu and Hong Kong. They then arrived at the hotel and the thematic restaurant inside the resort, with wide shots showing the name and logo of the hotel, panning shots of the hotel lobby and the facilities of hotel suite; and
- (c) after a short stay at the hotel, the artistes explored different zones of the theme park and described in great detail its facilities with favourable remarks accompanied by prominent shots of the facilities, with the name and/or logo of the facilities shown.

Relevant Provisions in the TV Programme Code

- (a) Paragraph 1 of Chapter 11 – indirect advertising in programmes is prohibited; and

Relevant Provisions in the TV Advertising Code

- (b) Paragraph 10(a) of Chapter 9 – the exposure or use of the sponsor's products/services within a programme should be clearly justified editorially, not obtrusive to viewing pleasure and not gratuitous.

The CA's Considerations

The CA, having regard to the relevant facts of the case, considered that –

- (a) the programme under complaint only covered the sponsor's resort instead of several places of interest as usually found in other travelogues. In particular, there were shots from different angles featuring the hotel of the resort, detailed descriptions and positive remarks (including the use of superlative adjectives) on the in-park facilities which carried promotional effects. Extensive exposures had been given to the sponsor's products and services;
- (b) even though the names of different parts of the theme park were not shown in full, the extensive exposures could hardly be considered as incidental. Coupled with the sponsor identifications shown in the front and end sponsor credits, as well as the sponsored programme title shown at the beginning of the programme, viewers could readily identify the facilities featured in the programme as those of the sponsor; and
- (c) the exposures of the sponsor's theme park in the programme was gratuitous and the presentation had obviously gone beyond the editorial

need of a travelogue which ATV claimed it to be, and was obtrusive to viewing pleasure. It was a clear case that the ground rules governing product/service sponsorship had been breached and advertising materials had been mingled and embedded in the programme. Hence, the broadcast of the programme was in breach of paragraph 1 of Chapter 11 of the TV Programme Code governing indirect advertising and paragraph 10(a) of Chapter 9 of the TV Advertising Code governing product/service sponsorship.

Decision

In view of the above and taking into account similar precedents and ATV's records of non-compliance with the relevant provisions governing indirect advertising and programme sponsorship, the CA decided that a **financial penalty of \$60,000** should be imposed on ATV for breaching the relevant provisions in the TV Programme and Advertising Codes.